PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR SECRETARIAT (LABOUR)

Labour Dispute.—Industrial Dispute between the workmen and the management of Jairamdas Udyog (P) Ltd., Bangalore.

Award of the Additional Industrial Tribunal, Bangalore, published.

Read the following papers :—

(i) Letter No. A.I.T. 483—4/67-68, dated 29th August 1967 from Shri V. C. Ramachandran, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE

Dated 28th August 1967

Present

Sri V. C. Ramachandran, B.A., B.SC., A.R.C.S., Bar-at-law, *Presiding Officer*.

A.I.D. No. 3 *of* 1967

I Party :

The Workmen of Jairamdas Udyog (P) Ltd., Bangalore.

Vs.

II Party :

The Management of Jairamdas Udyog (P) Ltd., Bangalore.

Appearances

For the I Party : Sri M. C. Narasimhan, Advocate, Bangalore.

For the II Party : Sri B. Gopaliah, Advocate, Bangalore.

Reference

G.O. No. PLM 22 LLD 67, dated 3rd February 1967

AWARD

By G.O. No. PLM 22 LLD 67, dated 3rd February 1967, the Government of Mysore have referred an industrial dispute between the workmen and the management of Jairamdas Udyog (P) Limited, Bangalore-2 for adjudication under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The dispute referred to this Tribunal by the Government is with regard to the termination of the services of four workmen and whether they are entitled to be reinstated with back wages and any other relief.

2. S. Abdul Khuddus was appointed as a clerk by the II Party with effect from 2nd January 1964. He was confirmed and given an increment and was in the scale of Rs. 168—8—224—9—251 on 28th July 1966. His services were terminated on 13th October 1966 on the allegation that he had not shown any improvement in his work and attendance in spite of warnings. The I Party contends that the termination of Abdul-Khuddus is illegal and unjust and *malafide*, that no enquiry was conducted against him, that the allegations made against him are untrue and that termination was motivated by victimisation and ulterior reasons. With regard to other three workers, *viz.*, Thamniah, Kothanda, Velayudha Mudaliar, their services were also abruptly terminated without proper enquiry and equally motivated by victimisation and for other extraneous reasons. The I Party prays that these workers may be reinstated with back wages and continuity of service.

3. The demands of the I Party were resisted by the Management. They repudiate all the allegations made in the claim statement. They contend that Khuddus was irregular

in attendance being absent for one reason or the other and so causing much inconvenience to the II Party hampering their work. In spite of several warnings issued, he did not show any improvement and the management had therefore no other alternative except to terminate his services under Rule 27 (1) of the Certified Standing Orders. They offerred to take him back on duty if he was prepared to give an assurance of regular attendance and good work and that offer was not accepted by him. So far as the other three workmen are concerned, the Management states that they were probationers, their services were terminated under Rule 28 (3) of the Certified Standing Orders without any enquiry for their participation in an illegal strike on 2nd November 1966. The Management pray that the entire reference may be rejected.

4. The following Issues have been framed :—

(1) Whether S. A. Khudus was irregular in attendance and causing inconvenience to the II Party ?

(2) Whether warnings had been issued to him, the last of them on 6th October 1966 ?

(3) Whether the termination of the services of S. A. Khuddus was *bonafide* and in accordance with the Certified Standing Orders.

(4) Whether the failure to hold an enquiry is justifiable ?

(5) Whether the termination was due to victimisation and was it *malafide* ?

(6) Whether the termination of the services of G. Kotbandan, K. Thammiah and Velayudha Mudaliar is *bonafide* and in accordance with the Standing Orders of the Company ?

(7) Whether the termination of the above workers is *malafide* and an act of victimisation ?

(8) To what reliefs are the workmen of the I Party entitled ?"

5. It may be stated at the outset that no enquiry has been conducted before the termination of the services of any of the four workmen. The reason given by the Management for not enquiring into the allegations against these workmen is that

they have chosen to proceed under Rule 27 of the Standing Orders by virtue of which, they are entitled to terminate the services of both permanent monthly rated employees as well as temporary or probationer employees without assigning any reason, but giving one month's notice in the former case and without any notice in the latter case. The Standing Order does provide for termination of employees without any enquiry, but the termination in all these four cases was meant as a punishment for misconduct alleged to have been committed by the workmen. The Order terminating their services points out that the termination was as a result of the misconduct committed by the workmen. The letter, Ext. W—10 addressed to S. Ablul Khuddus states that his services were dispensed with as he has not improved in his work and attendance in spite of oral warnings. The termination letters with regard to three other workmen show that it was because of their bad conduct and illegal activities. Hence it is clear that in all these four cases the termination of the Services of the workmen was meant to be a punishment for misconduct alleged to have been committed by them. If a workman committed any misconduct necessitating his termination of employment, the standing orders provided the procedure that have to be followed under Rule 35 which states that no order of suspension or dismissal from services shall be made except after holding an enquiry against the employee concerned in respect of misconduct alleged against him. He should be given a charge sheet stating the circumstances and a resonable opportunity to furnish the explanation and cross examine any witnesses on whose evidence the charge rests and also to examine any witnesses in his defence. Nothing of this procedure contemplated under Rule 35 of the Standing Orders has been followed. No charge sheet has been given to the delinquent, no enquiry was held, and no opportunity was given to produce their witnesses. In these circumstances, the procedure followed by the Management in terminating the services of these four workmen is against the principles of natural justice and therefore, vitiated. There is no proof that these four workmen have committed any misconduct which entails their dismissal or termination of their services.

6. The learned Counsel for the Management sought to make a distinction between the dismissal of the workmen and their discharge and argued with considerable vehemence that if this is a question of mere termination of services under Rule 27

of the Standing Orders, no enquiry is contemplated and in as much as no stigma is attached to mere termination of services, it is the sweet will and pleasure of the Management to do away with the services of any of its employees. In my view. and it is supported by a number of authorities, that contention has absolutely no force. In industrial adjudication, it is the duty of the Tribunal to find out whether the management has exercised its powers in terminating the services of the workmen *bona-fide* or *malafide*. If the Standing Orders were invoked for the purpose of punishment, although it may be called termination of services, it is a colourable exercise of the powers under the Standing Orders. In the instant case, it is apparent that what was really done to these four workmen was not mere termination of services or what is known as Termination Simplicitor, but it was a punishment meted out to these four workmen because they indulged in certain alleged misconducts. It is not of great importance as to what words are used in terminating the services, but the Tribunal has to get back and see the motive for the action taken by the Management. In this case, the motive is not even hidden but openly stated in the termination notices that the termination was due to the alleged misconduct committed by the workmen. In other words, termination was punishment for the alleged misconduct. In those circumstances, it cannot be said to be termination simplicitor but the termination was a punishment for misconduct, which amounts to dismissal from service.

7. The evidence adduced in this case does not bring home the guilty of any of the four workmen. Abdul Khuddus had been warned about his irregular attendance on 6th October 1966 and in that letter (Ext. W-6) it is stated that if he persisted in irregular attendance, the Management would be constrained to dispense with the services and that he would not give room to such an occasion. Abdul Khuddus has not absented himself after 6th October 1966 and yet he was dismissed from service on 13th October 1966 on the ground that he failed to appreciate the leniency shown to him. In other words it is apparent that he committed no misconduct from 6th October 1966 to 13th October 1966 and termination of his services was for no reason whatsoever. During the evidence, however, it is stated that he has asked for two hours permission on the 13th October 1966 which seems to have annoyed the Secretary and straightaway was taken the action of terminating his services. That action

seems to me arbitrary, illegal and unwarranted. So far as the other 3 workmen are concerned. the allegation against them is that they have taken part in the illegal stay-in-strike staged on 28th October 1966 from 11-35 A.M. to 2-30 P.M. and did not do the normal work given to them and refused to do the duty in spite of verbal and written warning. No evidence is adduced even before his Tribunal about the participation in the illegal stay-in-strike nor any work having been given to them which they refused to do, nor about the verbal and written warnings alleged to have been administered to them. The only evidence on the side of the Management is that of the Secretary who does not speak about any of these matters. All that he states is that these 3 workmen took part in an illegal stay-in-strike on 28th October 1966 and as probationers, their conduct was not good and hence I discharged them under Ext. M. 1. The three workmen were examined and they deny having participated in the strike. Their contention is that they worked on that day and there was no complaint against them that they have refused to do any work and they were not aware of any strike. The learned Counsel for the Management pointed out that they remained within the Factory till 3-30 P.M. even though their shift closed at 2-30 P.M., but that circumstance does not prove that they have participated in the strike. It may be that they were afraid to go out due to hostile attitude of those who struck work or it may be because of any instructions which they received to remain there. All these matters should have been properly enquired into and an opportunity should have been given to the workmen to explain their conduct. Without doing so and on the belief of the Secretary that they have participated in the strike, it is open to the Secretary to immediately dispense with their services. The industrial adjudication does not contemplate with equanimity the right of the management to hire and fire their workmen. The industrial law seeks security of service to workmen employed in the industry and the right to fire the workmen is subject to strict supertendence by the Court which will allow it only if it conforms to certain principles and not arbitrarily guided by whims and fancies of particular individuals.

8. There are a number of authorities which have laid down the proposition that the management cannot invoke standing orders to arbitrarily terminate the services of their employees and that the termination under the Standing Orders must be *bona-fide* and it meant as a punishment, proper opportunities to be given to

the employees to defend the charges levelled against them. I wish to refer to a few of those decisions, which apply to the facts of the present case. 1960 I LLJ 587 is a decision of the Supreme Court of India in which the same question arose for consideration. The contract in that case as in the instant case gave the employer the power to terminate the service of his employee after a month's notice and according to the terms of that contract, the services of the employee were terminated. The validity of such termination was challenged in industrial adjudication. Their Lordships thus set out the law as follows :—

> "It would be competent to the industrial tribunal to enquire whether the impugned discharge has been effected in the *bona fide* exercise of the power conferred by he contract. If the discharge has been ordered by the employer in *bona fide* exercise of his power, then the industrial tribunal may not interfere with it; but the words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the industrial tribunal would be entitled to go behind the words and the form and decide whether the discharge is a discharge simplicitor or not. If it appears that the purported exercise of the power to terminate the services of the employee was in fact the result of the misconduct alleged against him, then the tribunal will be justified in dealing with the dispute on the basis that despite its appearance to the contrary the order of discharge is in effect an order of dismissal. The exercise of the power in question to be valid must always be *bona fide*".

Applying those principles in the instant case, there is no doubt whatsoever that the orders of termination disclose that their services were terminated as a result of the misconduct alleged against them. That misconduct has not been enquired into and proved after giving an opportunity to the employees. Hence the exercise of the power to terminate the services under the Standing Orders cannot be said to be *bona fide* and those orders are liable to be set aside.

In 1962 I LLJ 374 their Lordships of the Supreme Court observed :—

> "It is too late in the day for an employer to raise a claim to terminate the services of his employee at any time

by just giving a notice or paying wages in lieu of such notice, for it amounts to a claim "to hire and fire" an employee as the employer pleases, such claim completely negativing security of service which has been secured to industrial employees through industrial adjudication for over a long period of time now. The requirement of *bona fides* is essential and if the termination of service is a colourable exercise of power or as a result of victimisation or unfair labour practice, the industrial tribunal would have the jurisdiction to intervene and set aside such termination".

The learned Counsel appearing for the Management relied upon the decision reported in 1967 II LLJ 718 where the Supreme Court held that where the Government had the right under the contract or the rule to terminate the service, the motive operating on the mind of the Government is wholly irrelevant. It possesses two powers to terminate the services of a temporary servant. It can either discharge him purporting to exercise its power under the terms of the contract or it can act under the powers to dismiss. It is open to the authority to drop further proceedings in the departmental enquiry and to make an order of discharge simpliciter against the temporary servant. In my view, that decision has no application in the industrial adjudication because that decision is based upon the Government Civil Service Rules. As pointed out in 1962 I LLJ, the considerations which are applied in the case of the Government Service are entirely different and the position of the Government servants stands entirely on different footings as compared to the industrial employees. The employer cannot now press his right purely on contract and say that under the contract he has unfettered right to hire and fire his employees. Such right is subject to industrial adjudication and even the power granted under the provisions of the Standing Order to terminate the services of the workmen without assigning any reasons or merely giving a notice or pay wages in lieu of such notice is now subject to industrial adjudication. The ratio dicendendi in all these cases is that the consience of the Industrial Tribunal must be satisfied that the exercise of the powers by the Management under the standing orders had been *bona fide* and not with a view to punish the workmen for the alleged misconduct not proved in accordance with the standing orders. In the instant case, applying those principles, the termination orders

cannot be said to be *bona fide* by the management and were meant to be punishment for alleged misconducts which have not been brought home to the workmen. In the result, I set aside the termination orders against the workmen. S. A. Khuddus is a permanent servant on a fixed salary and he is entitled to be reinstated with back wages and continuity of service. With regard to the other three workmen, they are no doubt stated to be probationers. Thammiah has finished his probation of six months on 28th October 1966 and he has been continued till 1st November 1966 when the Order terminating his services have been passed. After completion of the period of six months on 28th October 1966, he is entitled to be re-employed and in the case of other two workers, M. Velayutha Mudaliar and Kothandan, they were entitled to be confirmed on the expiry of the period of probation of six months if they show the trade efficiency and were found suitable. There is nothing in the evidence of the Management to say that they were unsuitable employees nor that they have shown any trade inefficiency. Hence in the usual course, they would have been permanent employees of the Company which had been wrongly interrupted by the termination orders passed by the Management. In those circumstances, they are also entitled to be reinstated with back wages and continuity of service.

9. My findings on the Issues for reasons stated above are as follows :—

1 Sri S. A. Khuddus was not proved to be irregular in attendence causing inconvenience to the II Party ;

2. A warning has been issued to him on 6th October 1966 but between that day and the day of the termination of his service, there was no irregularity in attendance on his part ;

The termination of the services of S. A. Khuddus is not *bona fide* and not in accordance with the Certified Standing Orders.

4. The failure to hold an enquiry is not justifiable.

5. The termination was *malafide*.

6. The termination of the services of Kothandan, K. Thammiah and Velayudha Mudaliar is not *bona fide* nor in accordance with the standing orders of the Company.

7. The termination of the above workers is *mala fide*.

10. In view of my findings, I pass the following award :—

A W A R D

The Order of termination of the services of S. A. Kuddus, G. Kothandan, K. Thammiah and Velayudha Mudaliar are set aside and they are ordered to be reinstated with back wages and continuity of service. The I Party is entitled to costs from the II Party which is fixed at Rs. 100.

V. C. RAMACHANDRAN.
28-8-1967.
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

ORDER

Bangalore, dated the 2nd September 1967

S.O. 1740.—WHEREAS by State Government Order No. LMA 22 LLD 67, dated 3rd February 1967, the Industrial Dispute between the workmen and the management of Jairamdas Udyog (P) Ltd., Bangalore, was referred to the Industrial Tribunal, Bangalore. for adjudication. The dispute was again transferred to the Additional Industrial Tribunal, Bangalore by G.O. No. LMA 595 LLE 66, dated 29th November 1967.

AND WHEREAS the Additional Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 22 LLD 67.]

By Order and in the name of the Governor of Mysore.

G. G. PUROHIT,
Under Secretary to Government,
F.C.L. Department.